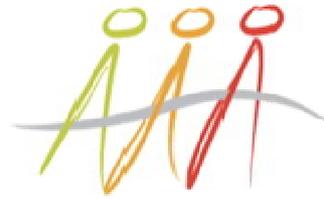




**ASSOCIATION FOR DEMOCRATIC INITIATIVES
SARAJEVO**



Triple A for Citizens

Supporting Access to information, Advice & Active help

**ACCESS TO JUSTICE:
PROVISION OF INFORMATION, ADVICE AND FREE LEGAL AID
IN BOSNIA AND HERZGOVINA**

Country Report was prepared as part of the project “Triple A for Citizens: access to information, advice and active help” supported by



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Executive summary

The right to free legal aid is a fundamental human right and a precondition for the enjoyment of other human rights such as the right to a fair trial and the right to an effective remedy. The right to a fair trial is guaranteed by numerous international instruments on human rights, which were signed by Bosnia and Herzegovina. Access to justice is guaranteed by the Constitution of Bosnia and Herzegovina and represents an essential element of a functioning rule of law system.¹ At the same time effective legal protection is not possible without providing legal assistance which is ensured by experts. The goal of free legal aid is to remove obstacles to access to justice; this is done by providing assistance to those who otherwise would not be able to bear the costs of legal representation and legal protection. This right contributes to the strengthening of public confidence in the equal access to justice both in front domestic and international tribunals.²

Since in Bosnia and Herzegovina there are 600.000 people living below the poverty line, the fact is that many of them cannot achieve free access to courts and pay lawyers; as such they are not able to properly and effectively protect their rights. Thus far, the reform processes that aimed at establishing a sustainable and comprehensive system of legal aid were unsuccessful.³ In Bosnia and Herzegovina there is no law on free legal aid that established the minimum rights of citizens in regards to legal aid. However the laws on free legal aid were separately adopted in the Republika Srpska, Brčko District, and in eight of the ten cantons in the Federation.

In the new Strategy for Justice Sector Reform in BiH for the period 2014–2018 it is stated that it is necessary to provide “the continuation of strategic action to establish the legal and institutional framework of free legal aid throughout the territory of BiH and harmonize the laws ensures the minimum standards for all and guarantees equality before the law.”

Association for Democratic Initiatives in 2013 carried out an analysis of the nature and availability of free legal aid, information and consultation which has been used for the production of the first report entitled Access to Justice: Providing information, advice and free legal assistance in BiH. A second analysis was performed based on the findings of the first report. The survey had 53 non-governmental organizations that provide free legal aid and 21 institutions in the period September – December 2015. Moreover, it included the analysis of existing legislation and legal practices in BiH and the existing capacity of providers of free legal aid. The goal of this analysis is to detect and analyze the obstacles faced by citizens who try to exercise their rights in courts and government bodies, and gain a deeper insight into the experience with free legal aid as a mechanism that is

¹ The Office of the High Representative: General Framework Agreement: Annex 4 – Constitution of Bosnia and Herzegovina. December 14, 1995.

² Ibid.

³ The reform process in Bosnia and Herzegovina in the justice sector began in 2006 in Brussels when the Council of Ministers, the European Commission and a number of donor countries adopted a declaration which provides for the reform of the entire sector. Strategy for Justice Sector Reform in BiH, which was adopted by the Ministry of Justice in 2008 and its accompanying Action Plan for the period 2008-2013 represented a strategic framework for planning and implementing a series of reforms. The strategic pillar “Access to Justice” aimed: “To improve the system of international legal assistance and establish, strengthen and maintain systems and processes that guarantee equal access to justice”. In section 3.2. Free legal aid and access to legal information, it is stated that BiH has yet to establish a viable and comprehensive legal aid system. Unfortunately, primarily for political reasons during the implementation of this strategy, a framework law on free legal aid in BiH was not brought, which would provide a basis for equal access to courts and justice for all its citizens.

available to those citizens who are faced with financial barriers or discrimination in the exercise of their rights.

The analysis gave an overview of the existing problems in this field and the ways of overcoming them. The key conclusion is the need for the soonest adoption of the Law on Free Legal Assistance at the state level as a precondition for the establishment of a harmonized free legal aid system which would fully reflect the international and European standards and practices at all levels of government.

Preface – Introduction to the Project

The project Triple A for Citizens: access to information, advice and active help aims to encourage non-governmental organisations to provide information, advice and active help to citizens on their rights in the Western Balkans and Turkey. It also seeks to promote the role of civil society in giving citizens a voice and holding governments accountable. By aggregating the complaints and evidence they receive, citizens' information and legal advice services are in a position to influence government policy on key reforms and their implementation.

The Triple A project is implemented in the framework of the European Commission's Partnership programme for Civil Society organisations.⁴ It is entering its fourth year of implementation in 2016 and has over the years expanded to all countries of the Western Balkans and Turkey. The implementing partners are as follows: the lead organisation European Citizen Action Service (ECAS), Belgium; National Association of Citizens Information Services (NACIS), Ireland; National Association of Citizens Advice Bureaux (NACAB), Romania; Law Centres Network (LCN), UK; Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; Civil Rights Programme (CRP/K), Kosovo; Lawyers' Committee for Human Rights (YUCOM), Serbia; Association of Civil Society Development Centre (STGM), Turkey; Macedonian Young Lawyers Association (MYLA), Centre for Monitoring and Research (CEMI) and Open Society Foundation Albania (OSFA).

Triple A for Citizens: access to information, advice and active help is the organising framework and strategy for the partnership:

- **Access to information:** Everyone has an equal right to “come to our door”, irrespective of income, status, language or belief and be treated with dignity and respect. People should be able to find and access basic information about their rights in the most convenient way possible. Equal access to information is necessary to provide especially to those who need help the most, because they have modest incomes or they belong to vulnerable groups due to disability, social exclusion or any other reason.
- **Advice:** Citizens must have access to an independent, confidential and impartial service they can trust. The role of the service is reflected in giving advice to citizens directly, by providing self-help manuals or other interactive tools. In all cases, citizens should receive the same high level of service and care.
- **Active help:** Citizens should not be left in situations of impasse, or having to start the whole process over again each time they seek assistance. In a small number of cases it is necessary to go further, often in cooperation with more specialised services, pro-bono legal support or assistance towards preparing an administrative or judicial appeal. There is a consensus that the most best approach is to allow citizens to resolve all issues in one service, because many people have a number of interrelated issues, such as housing, social benefits, salaries or pensions, and expect to find at least one answer at the first service they turn to, and at the same time not be referred to another service. This approach is also favoured by those who finance these types of services, especially at the time of the reduction of public spending.

⁴ Regional and Horizontal Programmes Ref. EuropeAid/132438/C/ACT/Multi.

Therefore, it is necessary to encourage advisory services which have greater capacity to work together, and those with less capacity to merge into larger units to a wider geographical area and to achieve better operating economy.

Providing assistance to citizens is an important service in its own right, but it should not be seen as an end in itself. Preventative or problem-solving actions can help solve individual problems, but there is a wider benefit to the general public in gathering evidence to inform and influence solutions for the greater good. Experiences the "Triple A" services can be used to find a general solution for elimination of violations of rights and improving the position of those who do not have access to this service and can serve as a basis for advocating amendments to the existing regulations and policies.

In the framework of the project two key outcomes are envisaged:

- **A functioning network of Triple A providers** whose **mission is to** ensure equal access to justice and protection of human rights for all citizens from the Western Balkans, Turkey and the EU through the provision of high quality information, advice and free legal assistance. It aims to strengthen the capacity of its members, promote cooperation with other stakeholders, and support the EU accession agenda of the candidate and potential candidate countries. The basis of the network are a set of self-regulating Quality Standards which ensures openness and transparency that in turn enhances the standing of Civil Society Organisations in relation to their governments, donors and citizens.
- **Regional advocacy campaigns**, based on evidence gathered from the direct provision of services to citizens, informing key recommendations to the legal reform process regarding access to justice, public funding of a free legal aid system, and the recognition of civil society organisations as quality providers of information, legal advice and free legal aid.

The national advocacy roadmaps are the basis of the advocacy work to be carried out in the region. They are the outcome of extensive research, surveys and data gathered done in 2015-2016 from first-hand interaction with citizens and their problems. The roadmaps have been refined through extensive consultations which included input from peer organisations both in the region and in the EU, and are embedded in established processes of consultations with national governments in the region.

Historical Context of Citizens Information Services

The right to free legal assistance is in itself a human right but also a prerequisite for the exercise and enjoyment of many other human rights, including the right to fair trial and effective remedy. These rights are clearly enshrined in the Universal Declaration of Human Rights (UDHR) and Article 6 of the European Convention of Human Rights, and form a basis of the principle of access to justice.⁵ The aim of the free legal assistance is removal of barriers that restrict access to justice by providing assistance to people who otherwise could not afford legal representation and access to justice protection. This right contributes the strengthening of public confidence in the administration of justice before, both, domestic and international courts.⁶ The claim that the right to free legal assistance is a human right should be understood beyond the narrow conception referring to the right to free legal representation before the court in criminal proceedings.⁷

Bosnia and Herzegovina is still in the phase of post-war restoration and has transformed itself into modern and democratic state which is supposed to guarantee the protection of human rights to all of its citizens, equally and in light of international standards.⁸ The Law on Free Legal Aid (FLA) from the former Yugoslavia was adopted in 1977⁹ and has still not been repealed. However, due to the circumstances that took place in the period following the adoption of the law, make the law unenforceable in practice. This law very broadly defines legal aid providers, and emphasizes the role of municipalities and workers' collectives as the main institution for legal assistance, advice and information to citizens. In this system, which many believe to have been effective, municipalities have established offices to provide legal assistance and advice to citizens in order to help them in their preparation of legal documents and representation in courts. The majority of cases were related to the protection of labour rights, protection of persons with disabilities, families of killed soldiers and people in need. A number of municipalities in BiH today have offices for the provision of legal assistance to citizens, but mainly in the field of property rights, urban planning and social welfare.

Because of the evident shortcomings of the existing FLA system in the post-war period, a number of non-governmental organizations, which were previously dealing mainly with the protection of fundamental human rights, choose to work in the field of providing advice, information and legal aid. In the early years, their work was primarily focused on assisting returnees, displaced persons, refugees and the civilian victims of war. However, today, when Bosnia and Herzegovina faces major development challenges and high poverty of citizens, the provision of free legal aid, advice and information is increasingly gaining in importance. A number of non-governmental organizations specialized in providing services to specific categories such as Roma, children without parental care, victims of domestic violence, single mothers, victims of trafficking, victims of discrimination, workers, the unemployed and LGBT persons. The adoption of the Law on Free Legal Aid in the Republika

⁵ Golubović, K. (2015). *Evropski standardi pravičnosti u upravnom zakonodavstvu i praksi*. [European Standards of Fairness in Administrative Legislation and Jurisprudence]. PhD Thesis, Belgrade: Faculty of Law University of Belgrade

⁶ Ibid.

⁷ The Office of the High Representative: General Framework Agreement: Annex 4 – Constitution of Bosnia and Herzegovina. December 14, 1995.

⁸ Qorraj, G. (2010). *Integrating the Western Balkans in the European Union: The Economic and Political Constraints*. Journal on European Perspectives, 1-14.

⁹ "Official Gazette of SRBiH", No. 11/77

Srpska, Brčko District and eight cantons was followed with the establishment of institutes and centres for the provision of free legal aid.

In 2012, the UNDP supported the establishment of the Network of providers of free legal aid¹⁰ in Bosnia and Herzegovina which today counts 16 organizations for the provision of free legal aid. By signing the Memorandum of Understanding, these organizations have established a unique platform for the exchange of expertise between institutions and NGOs involved in the development, application and promotion of standards for legal assistance.

Legal framework of Citizens Information & Assistance Services in Bosnia and Herzegovina

According to the Article II of the Constitution of Bosnia and Herzegovina, the rights and freedoms put forward in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols are to be applied in Bosnia and Herzegovina and are to take precedence over all other laws.¹¹ Article II / 1 specifies that “Bosnia and Herzegovina and both entities [...] are to ensure the highest level of internationally recognized human rights and fundamental freedoms.” It further adds that “rights and freedoms set forth in the European Convention for the Protection of human rights and fundamental freedoms and protocols [...] are to be implemented directly in Bosnia and Herzegovina”, and that “it shall have priority over all other laws.”¹²

Right to Access to Information

One of the most important legal instruments in terms of the provision of information, advice and free legal aid to citizens in Bosnia and Herzegovina is the Freedom of Information Act (FOIA) which was adopted at both the national and the entity levels¹³ in 2001 at the request of the High Representative for Bosnia and Herzegovina. The FOIA provides a basis for citizens and civil society groups to request access to public information. It establishes “that every person has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information.”¹⁴ Although its implementation has been uneven,¹⁵ in recent years the law has become quite an important instrument for NGOs and civic groups in the country to obtain public data, including free legal aid organizations.¹⁶ Several

¹⁰ <http://mrezaprvnepomoci.org/ba/>

¹¹ Demir, E. (2013). *Access to Justice: Provision of Information, Advice and Free Legal Aid in BiH*. Sarajevo: Association for Democratic Initiatives.

¹² Ibid.

¹³ Freedom of Information Act for Bosnia and Herzegovina (“Official Gazette of BiH”, no. 28/00, 45/06, 102/09, 62/11), Freedom of Information Act in the Federation of Bosnia and Herzegovina (“Official Gazette of FBH”, no. 32/01, 48/11) and Freedom of Information Act in the Republika Srpska (“Official Gazette of RS”, no. 20/01).

¹⁴ FOIA, Article 1.

¹⁵ Hodžić, A. (2011). *Making government transparent and accountable: Enabling access to information*. Sarajevo: Open Society Fund in BiH. [Internet] Available on: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdfp_10-11/Studies/ENG_59_Amra_Hodzic.pdf

¹⁶ Savić, M. (2011). *Dokle je došao moj predmet? Primjena Zakona o slobodi pristupa informacijama u sektoru pravde*. [When will my case be resolved? Implementation of the Law on Free Access to Information in the justice sector]. Sarajevo: Justice Network in BiH. [Internet] Available on: <http://www.mrezaprvde.ba/mpbh/latinica/txt.php?id=15>

studies¹⁷ have shown that the implementation of the FOIA has been more successful at the national level than at the level of the entities, cantonal and local government units. The FOIA does provide a basis for better protection of individual and collective human rights as journalists and human rights activists use it as a tool in monitoring the enforcement of human rights.¹⁸

Unfortunately, the Parliamentary Assembly in Bosnia and Herzegovina is currently considering proposed changes to FOIA that would significantly restrict access to public information and documents.¹⁹ Namely, the amendments potentially exclude the release of any public documents that contains personal data. This potentially covers information of great public importance, such as the use of public funds for social welfare, healthcare and unemployment benefits, as well as information concerning the performance of public office holders which is not included in a narrow list, all court decisions which are not included in a limited list of “cases of public interest” (“war crimes, organized crime, corruption, terrorism, tax evasion and other cases which represent cases of public interest”), as well as potentially other information concerning court proceedings which are ongoing or even after decisions have been handed down. The supporters of this proposal claim it justified by the need to harmonise the FOIA with the Law on the Protection of Personal Data in BiH.²⁰ A great number of NGOs have addressed the Ministry of Justice through the public consultation process in order to advocate for the scope of the right of access to public information to be retained in its present form. Whether this civic initiative will be successful in preventing the adoption of the proposed changes to the FOIA remains to be seen.

The provisions of legal aid

Law on Free Legal Aid

Bosnia and Herzegovina has no law that sets out minimum citizen’s rights when it comes to attainment of free legal assistance.²¹ Despite the lack of state laws certain parts of the country enacted laws and established institutions to provide free legal aid, laws on free legal aid have been passed in the RS, Brčko District, and eight of the ten cantons of the FBiH.²² BiH has “committed to the kind of particular and decentralized regulation of the institute of free legal aid,”²³ as such, the right to

¹⁷ Hodžić, A. (2011). *Making government transparent and accountable: Enabling access to information*. Sarajevo: Open Society Fund in BiH. [Internet] Available on: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdfp_10-11/Studies/ENG_59_Amra_Hodzic.pdf; Also see: US Department of State (2012). *2011 Human Rights Reports: Bosnia and Herzegovina*. 2012. [Internet] Available on: <http://www.state.gov/j/drl/rls/hrrpt/2011/eur/186336.htm>

¹⁸ The Institution of Ombudsmen for Human Rights of BiH is in charge of monitoring implementation of the Law, while each public institution is obliged to appoint a person or establish a department in charge for provision of information to the public. In case public institutions do not provide requested information, a citizen can make an appeal in an administrative procedure, but these tend to be long and complicated.

¹⁹ Centre for Investigative Journalism (2013). *Zakon o kojem se javnost ne pita: zaštita ličnih podataka ili zaštita institucija?* [Law that nobody talks about: protection of personal information or protection of institutions?] Klix.ba, April 23, 2013. [Internet] Available on: <http://www.klix.ba/vijesti/bih/zakon-o-kojem-se-javnost-ne-pita-zastita-licnih-podataka-ili-zastita-institucija/130423122>

²⁰ Law on the Protection of Personal Data in Bosnia and Herzegovina (“Official Gazette of BiH”, no. 49/06, 76/11, 89/11)

²¹ Sabrihafizović, Dž., Milanović M., Rešidović, E. (2012). *Sistem besplatne pravne pomoći u Bosni i Hercegovini*. [System of Free Legal Aid in Bosnia and Herzegovina]. Sarajevo: United Nations Development Programme in Bosnia and Herzegovina (UNDP).

²² Ibid.

²³ Čizmić, J. (2011). *Pružanje besplatne pravne pomoći u Bosni i Hercegovini s osvrtom na iskustva Republike Hrvatske*. [Provision of free legal aid in Bosnia and Herzegovina with review on experience of the Republic of Croatia]. Mostar: Human Rights Centre Mostar.

free legal assistance regulation in BiH is managed by a number of legal acts that are rather fragmented and serve as a “source of discrimination.”²⁴

Therefore, the European Commission (EC) urged the Ministry of Justice of BiH to ensure the widest possible support of the FLA act in the parliamentary procedure, including subsequent amendments, if necessary. It also reminded all competent authorities of the importance of their guarantee of free legal aid to all citizens.²⁵

To sum up, legally defined system of free legal aid²⁶ within Bosnia and Herzegovina is present in:

- The Republika Srpska (Law on Free Legal Aid, 2008)²⁷
- Brčko District Bosnia and Herzegovina (Law on Free Legal Aid offices, 2007)²⁸
- Zenica-Doboj Canton (Law on Institute for Free Legal Aid, 2014)²⁹
- West Herzegovina Canton (Law on Cantonal Institute for Legal Aid, 2008)³⁰
- Tuzla Canton (Law on Provision of Free Legal Aid, 2008)³¹
- Posavina Canton (Law on Institute for Free Legal Aid of Posavina Canton, 2010)³²
- Una-Sana Canton (Law on Provision of Free Legal Aid, 2012)³³
- Sarajevo Canton (Law on Provision of Free Legal Aid, 2012)³⁴
- Bosnia-Podrinje Canton (Law on Provision of Free Legal Aid, 2013)³⁵
- Herzegovina-Neretva Canton (Law on Free Legal Aid, 2013).³⁶

When it comes to the types of legal aid offered to the citizens in these areas, following types of legal aid were identified:

- oral advices on all rights and obligations³⁷
- assistance in completing forms and all kinds of writings³⁸
- representation before the administrative body³⁹
- representation before the court (except from the RS)⁴⁰

²⁴ UNDP (2012). *Access to Justice – Supporting the Rule of Law and Transitional Justice*. [Internet] Available on: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/operations/projects/crisis_prevention_and_recovery/access_to_justice.html [accessed September 29, 2015].

²⁵ Ibid.

²⁶ Ibid.

²⁷ Law on Free Legal Aid of the Republika Srpska (2008). [Internet] Available on:

http://aarhus.ba/sarajevo/images/docs/Zakon_o_besplatnoj_pravnoj_pomoci_120_08.pdf

²⁸ Law on Free Legal Aid offices (2007). [Internet] Available on: <http://skupstinabd.ba/3-zakon/ba/Zakon%20o%20Kancelariji%20za%20pravnu%20pomoc-/000%2019-07%20Zakon%20o%20Kancelariji%20za%20pravnu%20pomoc-%20Brc--ko%20Distrikta%20BiH.pdf>

²⁹ Law on Institute for Free Legal Aid (2014). [Internet] Dostupno na: <http://www.zdk.ba/propisi/category/44-zakoni>

³⁰ Law on Cantonal Institute for Legal Aid (2008). [Internet] Dostupno na: <http://skupstina-zzh.ba/opsirnije.asp?id=127>

³¹ Law on Provision of Free Legal Aid (2008). [Internet] Dostupno na: http://www.vladatk.kim.ba/vlada/Dokumenti/Zakoni/2009/zakon_o_pruzanju_pravne_pomoci_10_2008.pdf

³² Law on Institute for Free Legal Aid of Posavina Canton (2010). [Internet] Dostupno na: <http://zp.mrezapravnepomoci.org/zatrazite-pravnu-pomoc/zakonska-legislativa>

³³ Law on Provision of Free Legal Aid (2012). [Internet] Dostupno na: <http://usk.mrezapravnepomoci.org/zatrazite-pravnu-pomoc/zakonska-legislativa>

³⁴ Law on Provision of Free Legal Aid (2012). [Internet] Dostupno na: <http://zbpp.ks.gov.ba/sites/zbpp.ks.gov.ba/files/2015-12/ks%20zakon%20o%20pruzanju%20besplatne%20pravne%20pomoci%20kantona%20sarajevo.pdf>

³⁵ Law on Provision of Free Legal Aid (2013). [Internet] Dostupno na: <http://mrezapravnepomoci.org/ba/preuzimanja/zakoni-pravilnici-i-obrasci?download=27:zakon-o-pruzanju-besplatne-pravne-pomoci-bosansko-podrinjskog-kantona>

³⁶ Law on Provision of Free Legal Aid (2013). [Internet] Dostupno na: <http://www.vlada-hnz-k.ba/hr/zakoni-dokumenti/zakon-o-pru%C5%BEanju-besplatne-pravne-pomo%C4%87i-hn%C5%BE>

³⁷ Vaša prava BiH (2013). *Analiza besplatne pravne pomoći u kontekstu potreba građana i statusa pružalaca besplatne pravne pomoći*. [Analysis of free legal aid in the context of the needs of citizens and the status of free legal aid providers].

³⁸ Ibid.

³⁹ Ibid.

- drafting the appeal⁴¹
- legal assistance in mediation⁴²

The free legal aid is provided in subsequent procedures:

- criminal
- civil
- non-contentious
- enforcement
- administrative
- other cases, as prescribed by different laws.⁴³

National Code of Criminal Procedure

Aside from the disparate legislation on free legal aid, the national Code of Criminal Procedure,⁴⁴ as well as the procedural codes adopted by the entities,⁴⁵ also recognises the right to free legal aid in Bosnia and Herzegovina. These rules of procedure provide that the accused has a right to obtain legal representation from a court-appointed attorney in case the accused cannot afford the services of a defence lawyer but only in cases when the person is accused of a criminal offence that carries a sentence of imprisonment of three years or more, or when it is in the interests of justice to do so. The criminal procedure codes also prescribe the circumstances in which the accused person must be represented by a lawyer.⁴⁶ Legal representation in Court of BiH may only be provided by lawyers who are licensed to practice law and are listed in the register of attorneys in the Federation of Bosnia and Herzegovina or the corresponding register in the Republika Srpska.⁴⁷ At the state level, the national Code of Criminal Procedure stipulates that employees of special institutions that provide legal aid cannot represent before the Court of BiH. At the Republika Srpska level, conditions stipulated by the Code of Criminal Procedure provide that, in criminal proceedings, the right of representation is provided only for lawyers. It means that representatives of the Centre for Provision of Free Legal Aid cannot represent before courts of the Republika Srpska. On the other side, the Code of Criminal procedure of Federation of BiH stipulates that employees of institutions which provide free legal assistance may represent in criminal proceedings.

Code of Civil Procedure before Court of BiH

In addition, the codes on criminal procedures (nor legislation on free legal aid more generally) do not

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Code of Criminal Procedure of BiH ("Official Gazette of BiH", no. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09). Available on: <http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=40&jezik=e>.

The criminal procedure code in force in the Federation of BH is available on:

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=42&jezik=e>

The criminal procedure code of Republika Srpska is available on:

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=43&jezik=e>

The criminal code of Brčko District is available on:

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=44&jezik=e>

⁴⁵ The Civil Procedure Act ("Official Gazette of BiH", no. 53/03, 73/05 and 19/06); The Civil Procedure Act ("Official Gazette of RS", no. 58/03); the Law on Civil Procedure of Brčko District ("Official Gazette of Brčko District" 8/09, 52/10).

⁴⁶ Code of Criminal Procedure of BiH, Article 46, specifies that a person who is accused of a criminal offence must be represented by a lawyer if the accused is mute or deaf as well as in other circumstances relating to the alleged offence.

⁴⁷ Code of Criminal Procedure of BiH, Article 39 and Law on Court of Bosnia and Herzegovina, ("Official Gazette of BiH", no. 28/00, 15/02, 16/02, 24/02, 03/03, 37/03, 42/03, 04/04, 09/04, 35/04, 61/04, 32/07, 49/09, 74/09, 97/09), Article 12; see also Law on Attorneys' Profession of the Federation of Bosnia, ("Official Gazette of FBH", no. 25/02, 29/03) and Law on Attorneys' Profession of the Republika Srpska ("Official Gazette of RS", no 37/02, 30/07, 59/08).

stipulate whether victims or injured persons have a right to free legal aid.⁴⁸ The Law on Protection of Witnesses under Threat and Vulnerable Witnesses⁴⁹ and the Law on Witness Protection Programme in Bosnia and Herzegovina⁵⁰ provide for the right to free legal aid for the benefit of vulnerable witnesses and also those under threat. However, it is unclear how free legal aid is to be provided or financed for witnesses.⁵¹ Additionally, the OSCE has reported that legal aid for witnesses have so far not been incorporated into criminal procedure codes.⁵²

Civil procedure codes in BiH

In civil cases, the civil procedure codes in BiH⁵³ provide that the court may exempt a party from paying the costs of proceedings if the party's financial situation is such that payment of the costs of proceedings would jeopardise their ability to support themselves or members of their family. The exemption from paying the costs of the proceedings includes exemption from paying court fees, while getting a lawyer free of charge is part of separate processes directed towards the free legal aid providers. As a result, only limited legal aid is available in civil proceedings in BiH. Legal assistance in administrative proceedings is not regulated by legislation in BiH as the laws on administrative proceedings (national, two entity laws and one in Brčko District)⁵⁴ do not mention free legal assistance. However, the aforementioned laws contain identical provisions on the principle of assistance to an uneducated person. This principle states that the authority conducting the procedure has to ensure that in case of an unskilled person, that proceedings will not result in injury of that person's rights. Although this provision does not include the right to free legal aid to hire an attorney or other professional representation, it obliges public institutions to provide legal assistance to citizens, particularly legal information. In practice, municipalities and courts have usually appointed personnel and sometimes even departments offering assistance to citizens in filing documentation in administrative proceedings.

The Legal provisions and related professions

The FBiH Ethics Code obliges advocates to afford free legal assistance to socially vulnerable persons, and represent them when requested to do so by the competent body of the Bar Association.⁵⁵ Similarly, the RS Ethics Code obliges advocates to afford legal assistance to persons who are not in a position to pay for such services as well as to persons who are selected on the basis of the decision of the RS Bar association.⁵⁶ According to the comparative analysis conducted by the American Bar Association Rule of Law Initiative (ABA ROLI): "In practice, this ethical requirement is fulfilled only

⁴⁸ Sabrihafizović, Dž., Milanović M., Rešidović, E. (2012). *Sistem besplatne pravne pomoći u Bosni i Hercegovini*. [System of Free Legal Aid in Bosnia and Herzegovina]. Sarajevo: United Nations Development Programme in Bosnia and Herzegovina (UNDP).

⁴⁹ Law on Protection of Witnesses under Threat and Vulnerable Witnesses ("Official Gazette of BiH", no. 03/03, 21/03, 61/04, 55/05).

⁵⁰ Law on Witness Protection Programme in Bosnia and Herzegovina ("Official Gazette of BiH", no. 29/04).

⁵¹ Sabrihafizović, Dž., Milanović M., Rešidović, E. (2012). *Sistem besplatne pravne pomoći u Bosni i Hercegovini*. [System of Free Legal Aid in Bosnia and Herzegovina]. Sarajevo: United Nations Development Programme in Bosnia and Herzegovina (UNDP).

⁵² OSCE Mission in BiH (2010). *Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and recommendations a year after adoption of the National Strategy for War Crimes Processing*. [Internet] Available on: www.oscebih.org/Download.aspx?id=65&lang=EN

⁵³ Code of Civil Procedure Before Court of BiH ("Official Gazette of BiH", no. 36/04, 84/07, 58/13)

⁵⁴ The Administrative Procedure Act ("Off. Gazette of the FBiH", No. 2/98-33 and 48/99-1861); The Law on Administrative Procedure ("Off. Gazette of RS", No. 13/02-1 and 87/07-15-correction); The Administrative Procedure Act Brčko District of BiH ("Off. Gazette of BD", no. 3/00-1, 5/00-164, 9/02-665, 8/03-513, 8/04-341, 25/05-887, 8/07-279, 10/07-384, 19/07-893, 2/08-45 and 36/09-881) and The Administrative Procedure Act ("Off. Gazette of BiH", no. 29/02- 783, 12/04-1191, 88/07-10700 and 93/09-1)

⁵⁵ American Bar Association Rule of Law Initiative – ABA ROLI. (2014). *Comparative Analysis of Criminal Defense in Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Serbia*. Report, Washington: USAID.

⁵⁶ American Bar Association Rule of Law Initiative – ABA ROLI. (2014). *Comparative Analysis of Criminal Defense in Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Serbia*. Report, Washington: USAID.

through the Chambers' cooperation in providing a list of available advocates willing to be appointed by the courts to represent indigent defendants."⁵⁷ It has been also noted that the advocates who are selected to represent indigent persons, under the auspices of the chamber, can earn an income substantially above the average for an advocate in Bosnia.⁵⁸

Practical implementation of the existing legislation – Challenges facing providers of Triple A services

The European Commission in its progress report on Bosnia and Herzegovina in 2015 commented that "The system of free legal aid in Bosnia and Herzegovina remains fragmented and unregulated in some Cantons of the Federation" and noted that the Framework Law on Free Legal Aid had not yet been adopted: "On procedural rights, the legal and institutional framework for free legal aid remains incomplete, un-harmonised and discriminatory, as basic pre-conditions for free legal aid do not exist at all levels, including the State level. Minimum common standards for free legal aid should be harmonised between the various levels of authority and incorporated into the legal framework, where missing. Non-governmental organisations continued to actively provide free legal aid without any harmonised country-wide regulation."⁵⁹

Today, the provision of information, counselling and legal aid services reflects the existing political system in the country. It is extremely decentralized and a result of effort between the various stakeholders including state institutions, NGOs and international organizations.⁶⁰ The BiH system is characterized by following characteristics. Firstly, whilst a number of associations/institutions have been set up all over the country they are still absent in some cantons. Such instances include Livno and the Central Bosnia Canton.⁶¹ Therefore, access to justice in the form of free legal aid is unattainable to citizens residing in rural populations obtainable mainly by those residing in bigger cities and several smaller towns. This is alarming for social welfare beneficiaries and individuals with disabilities that are forced to travel to the nearest city in order to obtain free legal aid.⁶²

Institutions established for the purpose of providing free legal aid in BiH enjoy different status within administrative structure, depending on the place of their fieldwork.⁶³ The Office of the Brčko District is part of the judiciary of the District, and has a status of an independent body of the BD. The Office submits report on its work to the Judicial Commission of the BD. Unlike the Office of the BD, cantonal institutes for provision of free legal aid have the status of independent administrative organizations. Centre for Provision of Free Legal Assistance RS is an administrative organization within the Ministry of Justice and submits its reports to the Ministry. Consequently, the status of employees within institutions providing legal aid is different. Employees of the Office of the BD have the status of judicial employees, while employees of the Centre for Provision of Free Legal Assistance RS and cantonal institutes for provision of legal aid have the status of civil servants. "Internal organization is also different and it depends largely on financial resources of individual territorial units. Thus, legal aid providers in the Office of the BD are lawyers, which eliminated all doubts regarding the right to representation in all court proceedings. However, employees of the Centre for Provision of Free Legal

⁵⁷ Ibid.

⁵⁸ This data is based on the ABA ROLI research in BiH on the free legal assistance and the interviews conducted for that purpose.

⁵⁹ http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_bosnia_and_herzegovina.pdf

⁶⁰ Ibid.

⁶¹ Demir, E. (2013). *Access to Justice: Provision of Information, Advice and Free Legal Aid in BiH*. Sarajevo: Association for Democratic Initiatives.

⁶² Ibid.

⁶³ Ibid.

Assistance RS and cantonal institutes for provision of free legal aid do not have the status of a lawyer, and they are not able to have it according to the existing laws on the legal profession.”⁶⁴

There is a difference in terms of criteria and procedures for granting of free legal aid, and it depends on the jurisdiction of free legal aid providers. This opens the space for differential and incoherent practices towards citizens.⁶⁵ The Report on the access to justice in Bosnia and Herzegovina in 2013 outlines following examples: “In the canton of Tuzla the Institute for Free Legal Aid can provide legal assistance on the territory of the whole country and represent citizens in cases at any court or institution in the country, whereas in the canton of Zenica-Doboj although the institute provides legal aid to all citizens of BiH, it can only represent them before the cantonal courts and institutions.”⁶⁶ The Law on Free Legal Aid of the Republika Srpska excludes legal assistance and representation before administrative bodies and in administrative proceedings.”⁶⁷

The current free legal aid system does not view refugees as exceptional categories deserving free legal aid. This issue is imperative since the displaced individuals are financially the most susceptible fraction of the society, as they are exposed to existential uncertainty and potential (and very often) social exclusion.⁶⁸

It could be concluded that free legal assistance and advice provision in BiH depicts a very asymmetrical and decentralized system which reinforces discrimination and unequal access to justice by all citizens.⁶⁹ The international community has teamed up with several NGOs and strengthened their capacities to provide legal services, while the local authorities have established new public centres, both at the entity and cantonal level.⁷⁰ Despite all efforts, there are still many challenges.

In some cantons it is not comprehensible whether NGOs are accepted as free legal aid suppliers. Moreover, there is little, but some, collaboration between the public and the non-governmental sector.⁷¹ Even though some civil society organizations possess the relevant legal knowledge and expertise, the cooperation between them and public institutions had been poorly established.⁷² Finally, the funding of the free legal aid is rather challenging. A number of NGO's involved in the system state that it is becoming increasingly difficult to stumble upon donors willing to sustain their legal assistance activities – most donors believe that this should be under the auspices of the government. However, the public funding assigned to free legal aid is insufficient where public free legal aid institutions are exposed to all sorts of shortages.⁷³

⁶⁴ Sabrihafizović, Dž., Milanović M., Rešidović, E. (2012). Sistem besplatne pravne pomoći u Bosni i Hercegovini. [System of Free Legal Aid in Bosnia and Herzegovina]. Sarajevo: United Nations Development Programme in Bosnia and Herzegovina (UNDP), page 11.

⁶⁵ Ibid.

⁶⁶ Vaša prava BiH (2015). Unaprijeđenje pristupa pravdi – Podrška uspostavljanju sistema besplatne pravne pomoći u BiH. [Improving access to justice – Supporting the establishment of free legal aid system in BiH] [Internet] Available on: <http://www.vasaprava.org/?p=1270> [accessed September 29, 2015].

⁶⁷ Demir, E. (2013). *Access to Justice: Provision of Information, Advice and Free Legal Aid in BiH*. Sarajevo: Association for Democratic Initiatives.

⁶⁸ Ibid.

⁶⁹ Free Legal Assistance Providers Network in Bosnia and Herzegovina [Internet] Available on: <http://www.mrezaprapnepomoci.org/ba/o-nama/informacije-o-mrezi> [accessed October 4, 2015].

⁷⁰ Vaša prava BiH (2013). *Policy Brief: Jačanje i unaprijeđenje pristupa pravdi u BiH – Besplatna pravna pomoć*. [Policy Brief: Strengthening and improving access to justice in BiH – Free Legal Aid].

⁷¹ Ministry of Justice of BiH (2013). *Strategija za reformu sektora pravde u Bosni i Hercegovini za period od 2014. do 2018. godine*. [Justice Sector Reform Strategy in Bosnia and Herzegovina for period 2014–2018]

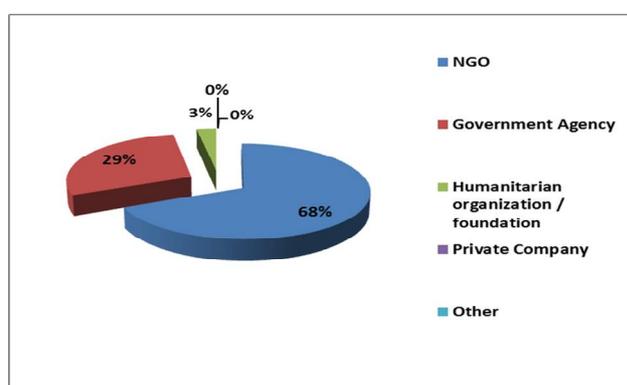
⁷² Ibid.

⁷³ Demir, E. (2011). *Društvena odgovornost pravosuđa u Bosni i Hercegovini*. [Social responsibility of the judiciary in Bosnia and Herzegovina]. Sarajevo: Open Society Fund, 1-40.

Availability of information and free legal aid services for citizens

The survey, conducted by Association for Democratic Initiatives in the period July – October 2015, included the following participants: 74 organisations/institutions, out of which 21 or 29% were public institutions such as Cantonal Institute for Free Legal Aid Bihać, Cantonal Institute for Free Legal Aid Široki Brijeg, Free Legal Aid Institute of Sarajevo Canton, Free Legal Aid Institute of Posavina Canton, regional offices Orašje and Odžak, Legal Aid Office of Brčko District, Cantonal Institute for Free Legal Aid Tuzla, Cantonal Institute for Free Legal Aid Goražde, Free Legal Aid Centre Banja Luka, and nine municipal free legal aid offices in Zvornik, Bihać, Vogošća, Teslić, Čitluk, Goražde, Olovo, Bosanski Šamac and Modriča, Office of Prijedor City and Gender centre – Gender Equality Centre of the Republika Srpska. The survey covered 3% of humanitarian organisations and 68% of non-governmental organisations.⁷⁴

Chart 1. Number of institutions/organizations which participated in survey



The survey revealed that trade unions play important role in providing legal aid and in protection of workers' rights. Very few trade unions have legal department within their organisations, and to overcome this problem, majority either use the offices of entity trade unions or hire lawyers when they have certain cases. Municipalities are mainly dealing with provision of legal advice in administrative law, but there is a trend of abolishing certain

number of legal departments in municipalities,⁷⁵ in the cantons, i.e. in cities and towns where there are established offices for free legal aid. Whereas institutions are financed from the budget, humanitarian and non-governmental organizations are financed through resources which they ensure through projects. Free legal aid projects are mostly financed by foreign donors, while the participation of institutions in the financing of NGO projects in this area is very scarce. The funds received for this type of NGO activity are almost negligible. In majority of cases, the activities of the public and non-governmental organisations are managed by director (92%), whereas in 8% activities are managed by the executive/steering boards. Only 32% of organisations have an assembly which is in charge to make decisions and control the implementation of decisions.

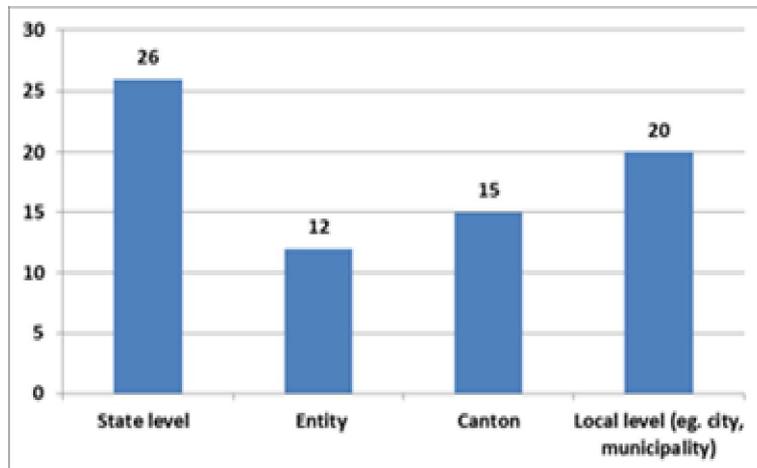
Most of respondents, advice and free legal aid providers, are non-governmental organisations at state level, and Municipalities at local level. Major non-governmental organisation acting at the state level with its nine field offices are located at the cities of Sarajevo, Prijedor, Bosanski Petrovac, Goražde, Banja Luka, Mostar, Srebrenica, Trebinje and Tuzla is Vaša prava (Your Rights). Municipalities still represent a highly important local level where citizens exercise their rights to information and advice in legal matters. In most cases, Municipalities provide citizens with verbal legal advice, assist them in completion of forms and various applications, whereas more complex

⁷⁴ For the purpose of analysis, data on humanitarian and non-governmental organizations are still listed together.

⁷⁵ Municipality Centar Sarajevo revoked the legal department in December 2015.

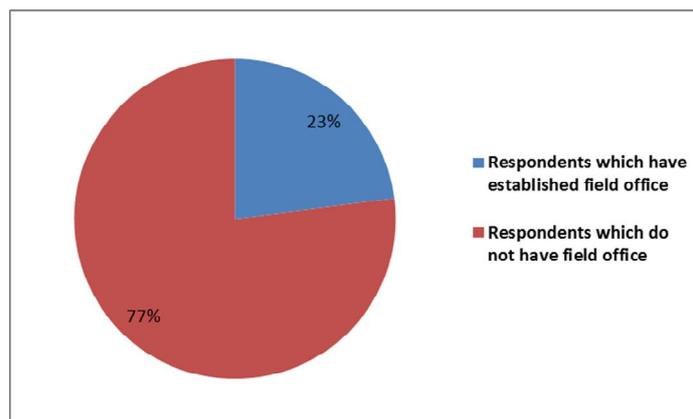
cases that require preparation of requests and appeals in administrative proceedings are referred to Free Legal Aid Institutes.

Chart 2. Administrative levels of activity by respondents



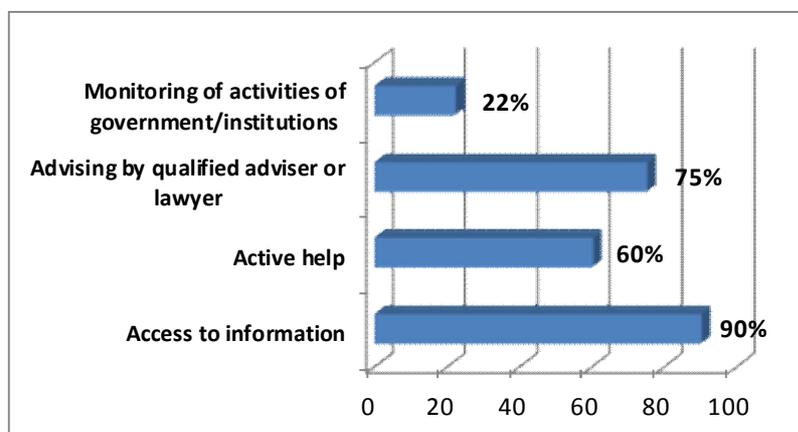
According to the survey, most respondents – institutions/NGOs work at the state level (26 institutions/NGOs), the local level (20); there are 15 at the Cantonal level, and 12 institutions/NGOs at the Entity levels. Respondents have offices in 30 towns in Bosnia and Herzegovina, with majority of 18% coming from Sarajevo, followed by Banja Luka with 14%, Bihać 7%, Brčko and Tuzla 5%.

Chart 3. Information and aid providers having field offices



Only 23% of respondents have set up field offices and work outside of their organisation’s main office. The remaining 77% of respondents only work at the town of their registration.

Chart 4. Type of service offered to beneficiaries

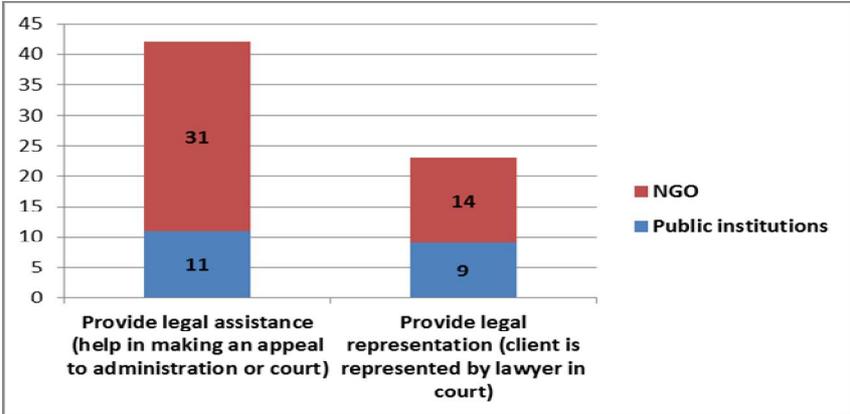


The organisations that have taken part in the survey have stated that they provide services in following fields: 90% of respondents provide access to information; 75% of respondents offer legal advice provided by a qualified attorney or counsel, whereas active aid i.e. assistance in the drafting of appeals to the

administration or court and representation in court and in administrative proceedings is provided by 60% of respondents. Most organisations provide several types of services, that is, 52% of them

provide all three types of services mentioned, while 22% of respondents (NGOs in 95% of cases) deal with governmental/institutional work monitoring.

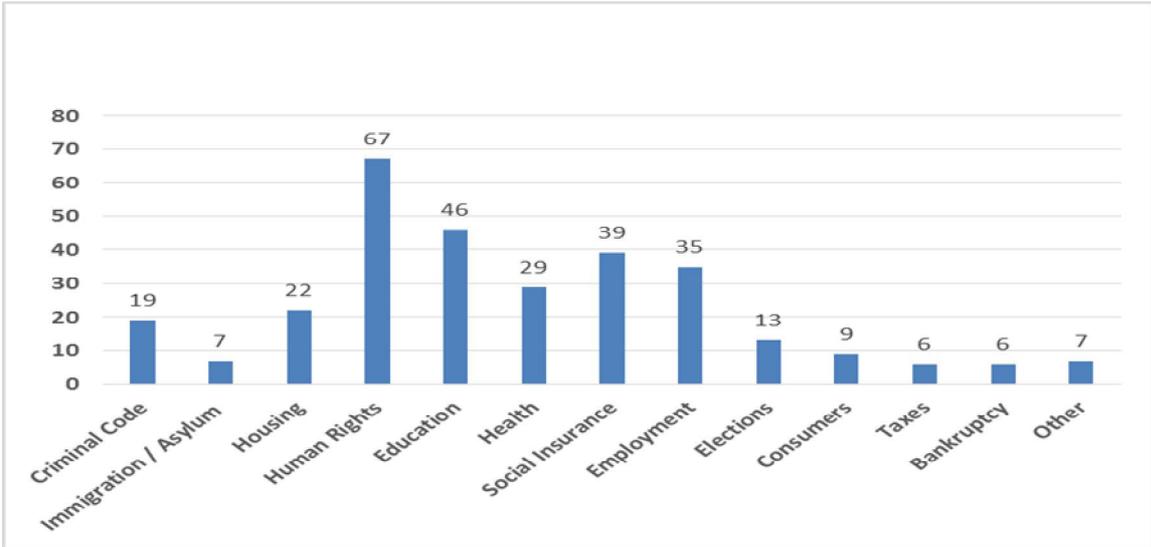
Chart 5. Active legal aid offered by respondents participating in research



A total of 44 out of 73 respondents (or 60%) provide active legal aid. Few of them provide both types of services, while others provide only one of the two types of services. 42 NGOs/institutions provide assistance in the drafting of appeals to the administration or court,

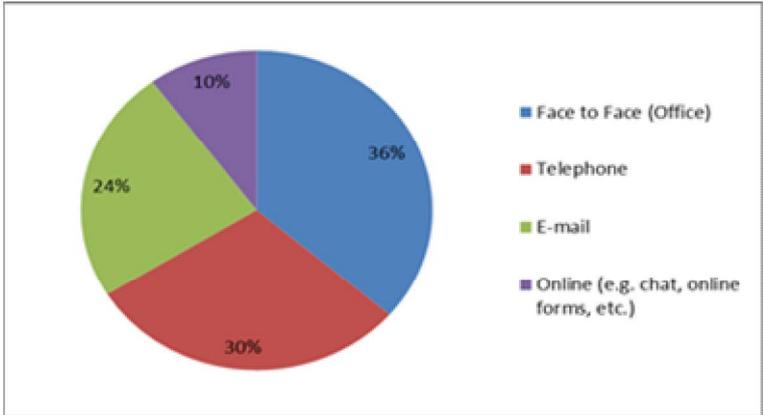
and 23 NGOs/institutions provide legal representation in court and in administrative proceedings.

Chart 6. Fields and sectors where legal aid and information are provided



The above services are offered by respondents in various fields and sectors, with most services provided in the fields of human rights protection, followed by education, social care, and employment.

Chart 7. Methods of service provision to beneficiaries

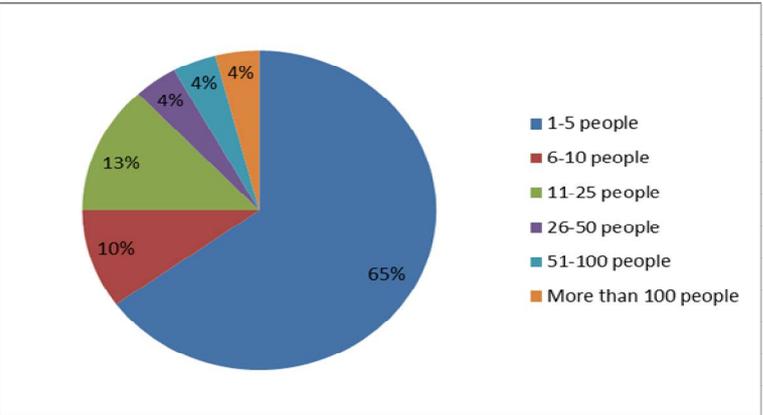


The respondents usually provide their services directly at their offices, that is, in a face-to-face dialogue with their clients (in 36% of cases). In addition to this method of service provision, an important segment refers also to provision of information and advice via the telephone (30% of respondents), and e-mail responses to queries (24%). Fewest

respondents use the web page as an interactive method to provide information and advice (only 10%).

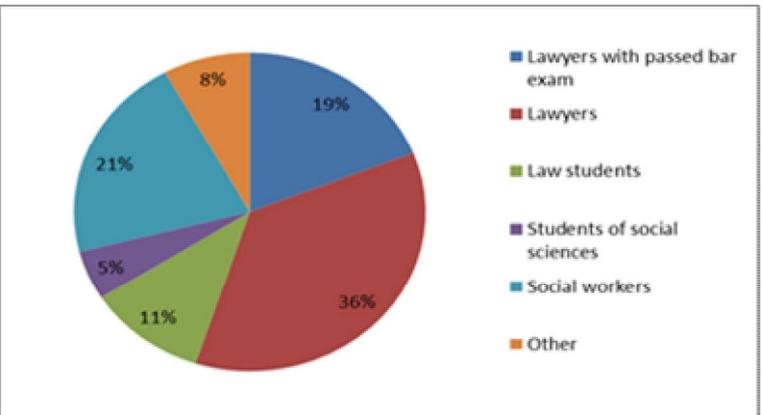
Respondents’ capacities, work organisation methods, and beneficiary categories

Chart 8. Number of employees



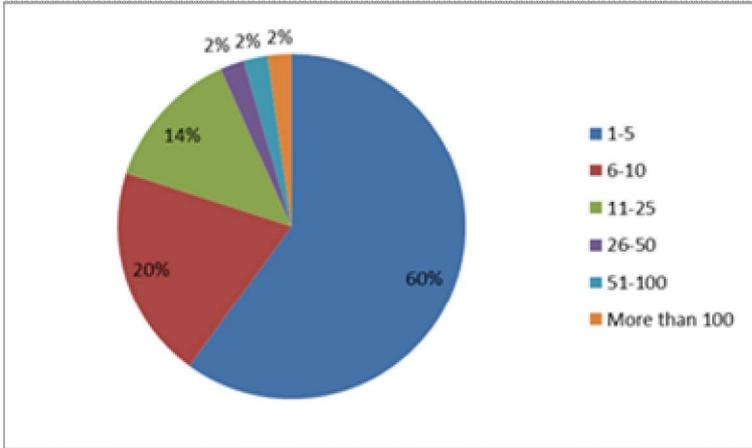
A total of 65% of respondents have between 1 and 5 employees; 10% of respondents have 6 to 10 employees; 13% of respondents have 12 to 25 employees, whereas the remaining three categories account for 4% each: 26 to 50, 51 to 100 and over 100 employees.

Chart 9. Employee qualifications



Most organisations hire lawyers, (36% of them); lawyers with completed bar exam (19%), social workers (21%), and law students (11%). Other employee categories refer to social science students and other occupations depending on the field in which advice and information is provided.

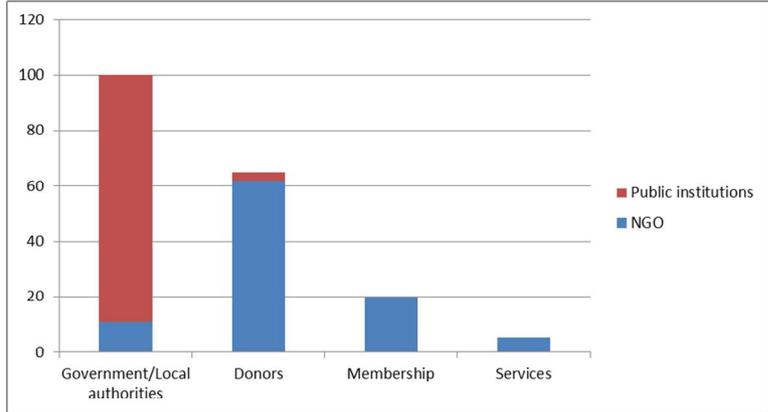
Chart 10. Number of volunteers



A total of 60% of respondents engaged in provision of advice and information hire between 1 and 5 volunteers; 20% of respondents hire 6 to 10 volunteers; 14% of respondents hire 12 to 25 volunteers, while 2% refer to the remaining three categories each: 26-50, 51-100, and over 100 volunteers. Most volunteers are law students (36%), persons with a degree in social work, and social science students.

Out of the total number of respondents, 64% of them provide their services within the eight working hours per day, five days a week; 24% of them provide advising services for a particular number of days (e.g. three days a week), whereas the remaining 12% provide their services only once a week.

Chart 11. Financing sources

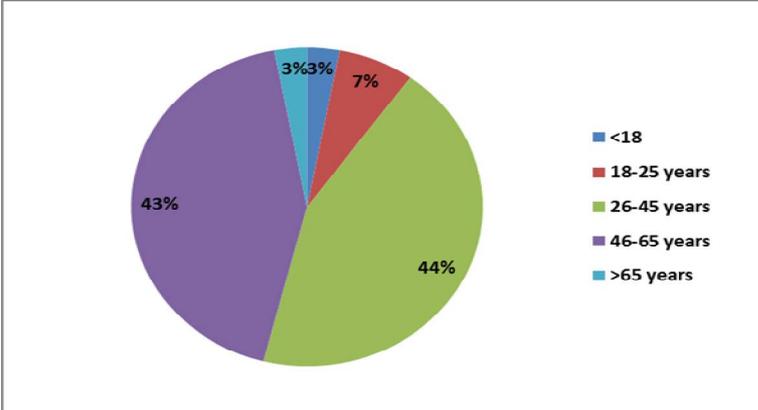


Public institutions are mostly financed out of the budget, and only 10% out of other funds, such as donor funds.⁷⁶ For the most part, NGOs are financed from international donor funds, or funds obtained on the basis of projects financed by governments or local authorities in BiH, membership fees and service rendering. It can be concluded that the scope of

services provided by NGOs largely depends on the amount of donor funds provided, and that NGOs are able to plan the scope and type of their services with much less certainty than the institutions.

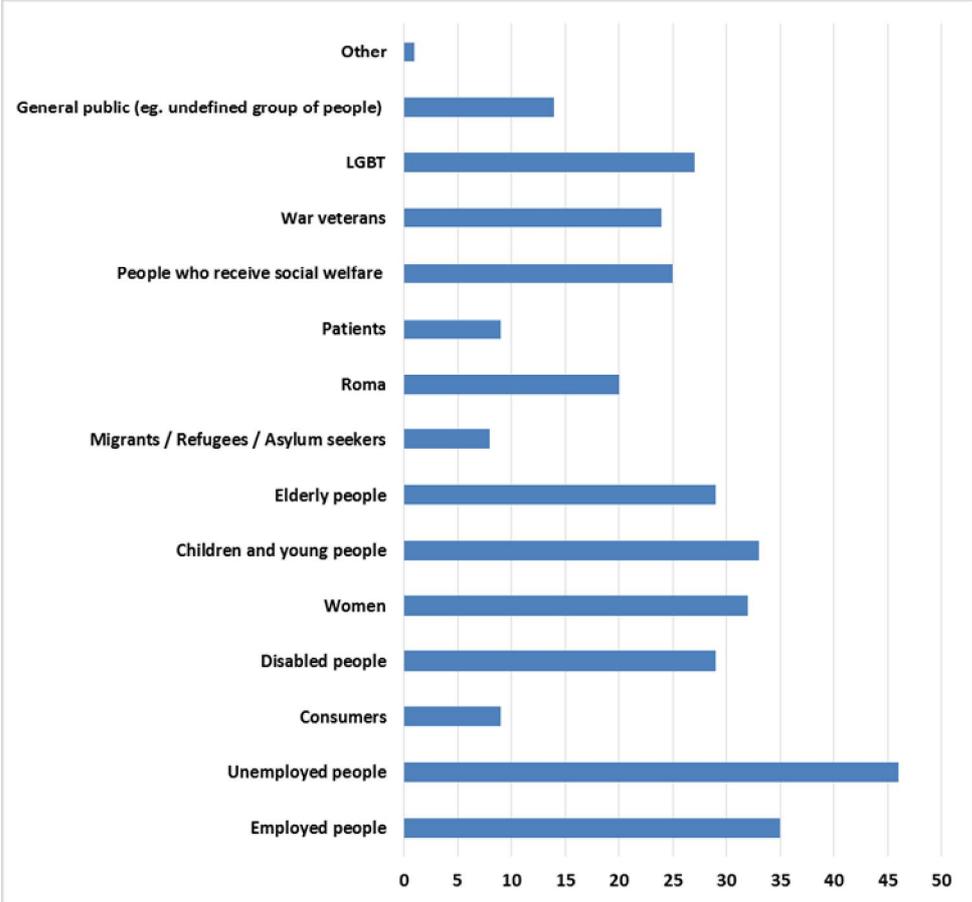
⁷⁶ UNDP Programme Network for coordinating providers of free legal aid

Chart 12. Free legal aid and information service beneficiaries' age



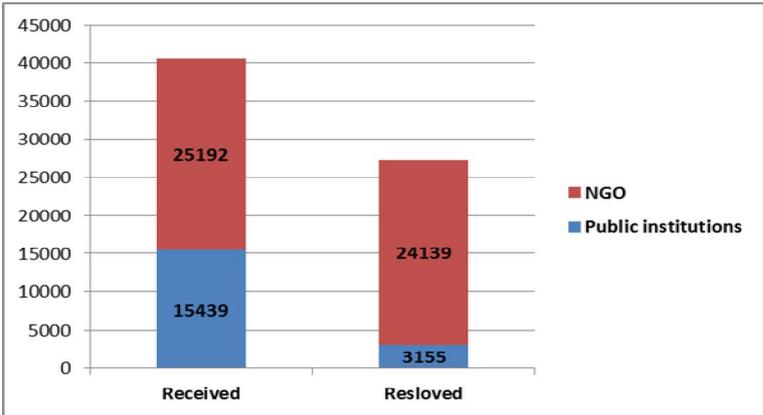
Most of users of advice and free legal aid services fall in the category of 26 to 45 years of age, followed by users whose age range between 46 and 65 (43%). Persons aged up to 18, 18 to 25, and over 65 are the ones who least use the services provided by the respondents.

Chart 13. Free legal information and aid beneficiary types



Unemployed persons are the most frequent beneficiaries of free legal aid, followed by the employed, children and young, disabled, LGBT persons, women and elderly.

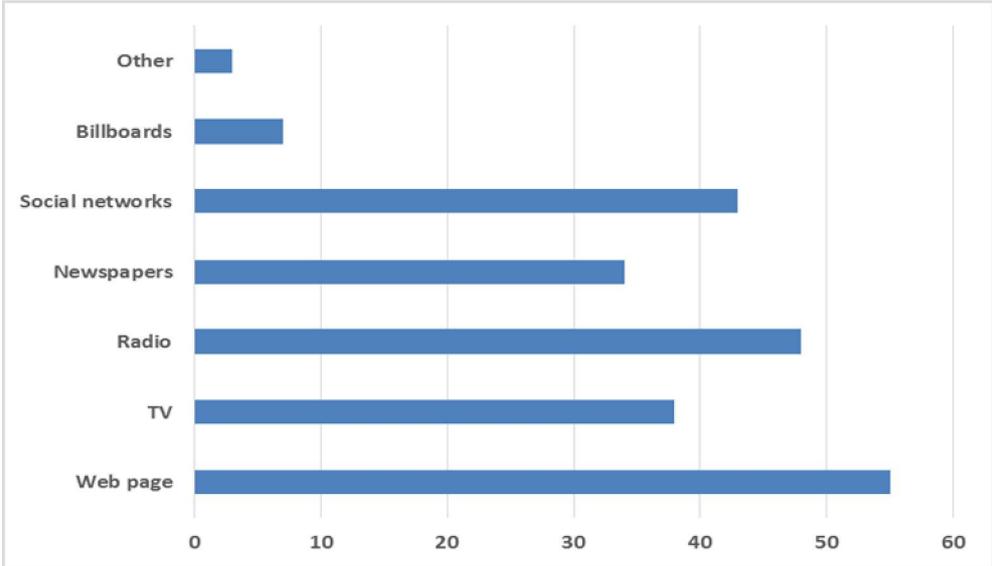
Chart 14. Number of received/processed requests



Number of requests received by respondents in the period between January and September 2015 amounts to a total of 40.631, out of which NGOs received 25.192 requests, and institutions 15.439 requests. Total number of resolved requests amounts to 27.294 with NGOs making up for 24.139 and institutions making up for 3.155 requests. It must be noted that

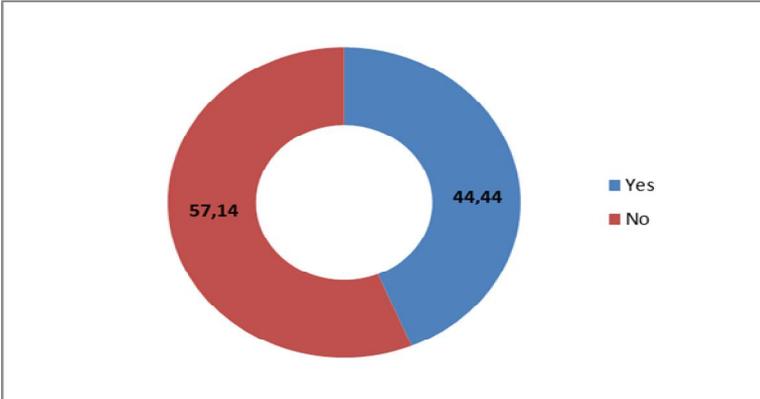
complexity of resolved requests varies from providing information and advices to legal counsel and representation in court. Taking into account the number of resolved requests that require representation in court, that is, an engagement of an attorney or a lawyer with completed bar exam, the number of cases resolved by institutions exceeds the number of cases resolved by NGO.

Chart 15. Communication channels used by respondents for public information



Respondents use diverse communication channels in order to ensure timely and comprehensible information for public on types and methods in which advice and free legal aid services are provided. The most frequently used method of service announcement is via web pages, and radio and TV programmes. The use of social networks, such as Facebook, has grown compared to previous years, while the number of organisations using billboards and brochures as methods to distribute information on the nature of their engagement is decreasing.

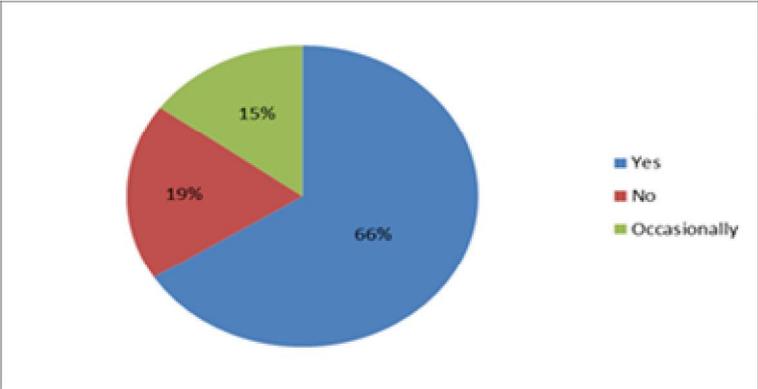
Chart 16. Have quality measurement standards been established for services you provide?



A total of 57.14% of respondents do not have established standards for service quality measurement and control, while 44.44% of them do. All Municipalities and public institutions do have some standards established; e.g. Municipalities mostly work in accordance with ISO-9000 standards, while public institutions

apply obligatory standards prescribed by laws/rules of procedure/operation. Also, a number of NGOs have established standards that they apply in everyday operations, and that generally refer to methods of receipt of requests/clients, keeping and receiving of information, and document filing.

Chart 17. Has referral system– referring of citizens to other specialized institutions/organisations - been set up?



Referral system implies that aid providers have established mutual cooperation with other providers of advice, information, and free legal aid, to regularly refer their beneficiaries to other specialized institutions/organisations that are able to provide them with requested assistance, that are located closest to the beneficiary's

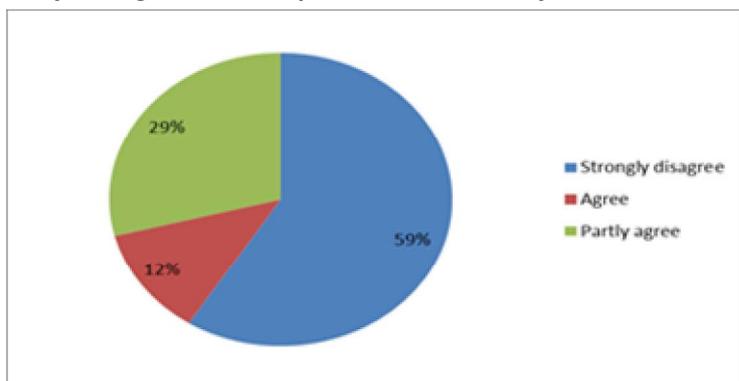
place of residence, and that they keep records thereon. 66% of respondents do have referral system established, and 15% of them do it ad hoc, that is, occasionally and in individual cases, while 19% of them have neither established the referral system nor do they ever refer their beneficiaries to other specialized institutions/organisations.

Identified gaps in the current system of information, advice, and free legal aid provision

The current system of information, advice, and free legal aid provision in BiH is highly decentralised and asymmetric. The issue of free legal aid availability has only been partially resolved. Citizens living in the area of the Federation of BiH in Cantons that lack mechanisms for provision of free legal aid, and citizens requiring legal aid in court and administrative proceedings outside of their place of residence (refugees and displaced persons) have difficult access to justice and are fully dependant on assistance from civil society organisations in the exercise of their rights. “Although some Municipalities in BiH have regulated provision of free legal aid at the local level, such practice is inconsistent, selective, and discriminating in some cases. Creating a comprehensive system that

ensures minimum equality before the law for all citizens of BiH is a great challenge faced in this field".⁷⁷

Chart 18. According to your opinion, does the current system for provision of information, advice and free legal aid correspond to the needs of citizens?



59% of respondents believe that **the current system does not correspond to the needs of citizens**, 12% consider the system fully correspondent to their needs, whereas 29% of respondents consider the system partially corresponding to the needs of citizens. The major issue is still the fact that most **population living in**

rural areas are unable to access information, advice and free legal aid in the same way as citizens coming from larger urban areas. Also, **due to poor mobility of free legal aid providers and their territorial bounds**, socially vulnerable categories, such as disabled, children without parental care, single mothers, victims of war, or displaced persons are unable to obtain aid in time. Mapping showed the highest concentration of service providers in the Sarajevo Canton, Brčko District, Una-Sana Canton, Tuzla Canton, city of Banja Luka, while the available capacities in towns such as Glamoč, Prozor, Kupres, Ljubinje, Rudo and Kladanj are much less than the actual needs of citizens. There is a series of causes that make the current system dysfunctional and discriminating. **With regard to the existing legal framework, 88% of respondents consider that enactment of the Law on free legal aid at the level of BiH constitutes one of the priorities for BiH judiciary** that would guarantee equality of citizens in exercise of the right to free legal aid. **Bodies that currently provide free legal aid in BiH differ in their status and organisation.** While the Brčko District Free Legal Aid Office, which is part of the Brčko District judiciary, holds a status of an independent judicial body in the Brčko District, other bodies providing legal aid do not have the status of independent bodies. The Republika Srpska Legal Aid Centre is an administrative organisation within the Republika Srpska Ministry of Justice which reports to the Ministry, and the Cantonal legal aid institutes constitute offices within Cantonal Ministries of Justice and do not have independent status. Employees providing legal aid within the abovementioned bodies **have uneven positions and statuses**, and the **internal organisation of the free legal aid providers differs as well.**⁷⁸ It is also worth mentioning that the **free legal aid subject-matter** both differs and depends on territorial organisation of the abovementioned bodies.⁷⁹ The

⁷⁷ Vaša prava BiH (2011). *Nejednačenost i neefikasnost sistema besplatne pravne pomoći i potreba donošenja zakona o besplatnoj pravnoj pomoći na nivou Bosne i Hercegovine*. [Unevenness and inefficacy of the free legal aid system and necessity of enactment of the state level Law on free legal aid of Bosnia and Herzegovina], page 7.

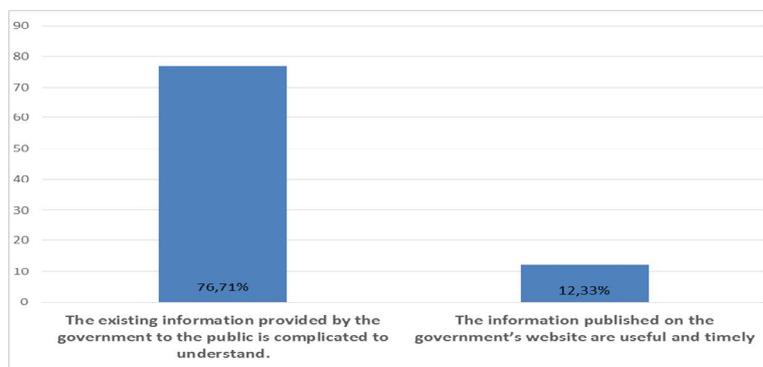
⁷⁸ Employees of the BD Free Legal Aid Office have employee status, whereas the employees of the RS Legal Aid Centre and the Cantonal Free Legal Aid Institutes have civil servant status.

⁷⁹ The Law sets forth that the BD Office will represent in criminal, civil, extra-judicial, enforcement, minor-offence, administrative proceedings, administrative disputes, and other proceedings provided under separate laws. In the RS, legal aid implies representation in civil proceedings, in criminal proceedings in part where the right to defence is provided by means of appointment of a defence attorney on account of poor financial status of suspect or defendant, as well as representation of the injured party in criminal proceedings, administrative disputes, extra-judicial and enforcement proceedings, while it is not provided in administrative proceedings (in such cases, legal aid is provided through competent Municipal services). In Cantons where the FLA law has been enacted differences exist in terms of subject-matter and of the territory where such services are provided.

current FLA laws have differing requirements and procedures based on which citizens are allocated the right to a free legal aid.

Chart 19. Existing information provided by government to public

A large number of respondents feel that, in addition to legislation, there are other causes which



render the existing system for provision of information, advices and free legal aid dysfunctional.

76.71% of respondents deem that current information provided by the government to public are complicated for the citizens and are difficult to comprehend, while only 12.33% consider that

information are useful and delivered in timely manner.

In addition, respondents stated that existing **administrative procedures to receive free legal aid from foreign institutions are complicated and not adjusted to the citizens and beneficiaries.** The **human and material resources of free legal aid providers are limited.**⁸⁰ The issues of financing, in particular the financing of NGOs which largely depends on the foreign donor funds, results in the services not being available to the sufficient extent. There is also a disparity against the number of NGOs, legal aid providers and population recipient categories. **Some population categories receive aid from a larger number of NGOs, which provide aid** (i.e. military veterans, civil war victims and discrimination victims).

Although **bar associations** play an important role in free legal aid system, their role in BiH is not sufficiently clear and precise. "The Law on Legal Profession of the Federation of BiH does not stipulate explicit obligation of lawyers for *pro bono* legal representation as it is the case in neighbouring countries. However, the Code of Ethics for Lawyers of FBiH defines the obligation of the lawyer to provide free legal aid to socially vulnerable persons and to assume representation of socially vulnerable persons as determined by the relevant body of the Bar Association. The Law on Legal Profession of the Republika Srpska foresees the explicit obligation of the lawyer to provide *pro bono* representation as is the case in the neighbouring countries. However, the Code of Ethics for Lawyers of Bar Association defines the lawyer is obliged to provide legal aid to the party for whom it is known that he/she is not able to pay for the legal service or to the party which was assigned per schedule determined by the relevant body of the Bar Association, i.e. to another organisation pursuant to the decision of the Bar Association, which incurs the costs."⁸¹

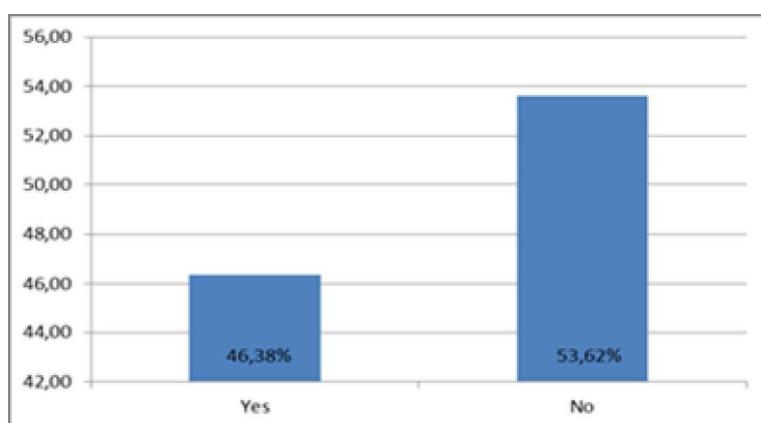
⁸⁰ Both institutions and NGOs

⁸¹ Sabrihafizović, Dž., Milanović M., Rešidović, E. (2012). *Sistem besplatne pravne pomoći u Bosni i Hercegovini*. [System of Free Legal Aid in Bosnia and Herzegovina]. Sarajevo: United Nations Development Programme in Bosnia and Herzegovina (UNDP), p. 24

Civil Society Organisation public advocacy capacities in u BiH

The survey conducted by TACSO BiH⁸² on the public advocacy capacities of CSO in BiH emphasises that “**the advocacy activities of OCD/CSOs are very rarely based on their own policy analyses.** In addition, CSOs **in very few occasions monitor the implementation of policies whose adoption they advocated.** **Advocating activities** of COSs are, in particular **limited** due to the absence of a clear financial plan and an inability to pursue **fundraising.**” The report revealed insufficient capacities in the segment of **human resources**, whereas the way the organisations answered the questionnaire indicated that they **do not grasp the notion of advocacy itself**, although they rated high their advocacy capacities.

Chart 20. Number of respondents who participated in advocating activities so far



The percentage of respondents who participated in advocating activities is 46.38%. In advocating process, majority of respondents had a role of lead organisation. Advocating activities constitute only one of the components of their project activities, and there is an increasing number of organisations pursuing public advocacy activities, compared to

2013.⁸³ The respondents deem there are two reasons why there are more advocacy activities. The first reason is that CSOs in BiH realised that advocacy is a powerful tool to push forward certain changes in the area of public policies. The second reason is that many donors require/finance advocacy projects/activities. The majority that participated in advocacy activities that pertain to: adoption of the Anti-discrimination, Law on Gender Equality, Law on Combating Domestic Violence, Family Law which should reduce discrimination of pregnant and parturient women, and ensure more financial support and equal rights, regardless of the residence in Bosnia and Herzegovina, adoption of the primary and secondary legislation to implement Law on Gender Equality of Bosnia and Herzegovina, adoption on the state level Law on Protection of Torture Victims in BiH, amendments to the Law on Freedom of Access to Information of BiH, Labour Law of FBiH, Law on Public Order and Peace of RS, Law on Public Procurement of BiH, Draft Law on Publicity of the work of NGOs in RS, Law on Associations and Foundations of BiH, and secondary legislation which pertains to civil service employment.

There is no state-level framework law on free legal aid in BiH. The last proposal of BiH Law on Free Legal Aid from 2013⁸⁴ did not receive required majority of support in the parliamentary procedure.

⁸² CPCD Sarajevo (2012). *Izveštaj o kapacitetima OCD baziranih na članstvu u oblasti zagovaranja*. [Report on the capacities of CSOs based on membership in the field of advocacy]. [Internet] Available on: http://civilnodrustvo.ba/files/Izveštaj_o_procjeni_kapaciteta_organizacija_civilnog_drustva_baziranih_na_clanstvu_u_oblasti_zagovaranja_-_2012.pdf

⁸³ Research results of the Access to Justice research: Provision of advices, information and free legal assistance in BiH from 2013, Triple A project

⁸⁴ As a member of the working group NGO Vaša prava BiH participated, member of the Triple A network

The drafting of the new BiH Law on Free Legal Aid is envisioned in the work programme of the new 2014-2018 Justice Sector Reform Strategy, in the period until the end of December 2014, but it remains uncertain when it will be completed. The establishment of harmonised legal and institutional framework for free legal aid in BiH has also been envisioned in this strategy, which implies adoption of the FLA on the level of FBiH and remaining cantons until the end of 2015. Unfortunately, neither of the laws were adopted until the end of 2015.

Advocacy Activities of Triple A Members

A certain number of NGOs in Bosnia and Herzegovina has been very active in advocating for the adoption of the state-level Law on Free Legal Aid in BiH. 2008–2012 Justice Sector Reform Strategy, which was also drafted with the contribution from NGOs, envisioned creation of pre-requisites for equal access to justice for all BiH citizens, regardless of their economic status. One of the priorities listed in this strategy was the adoption of the law to govern this area. The first, 2007 draft of the Law on Free Legal Aid caused major objections from the group of NGOs which primarily provided free legal aid. They drew attention to a series of flaws in the law, which were primarily related to eventual bias in providing free legal aid by the administrative body, in particular in the cases of party's disputes with administrative bodies.

Vaša prava organisation developed a series of analyses of the text of proposed law and existing practice.⁸⁵ In the period 2010–2014, Justice Network⁸⁶ produced four analyses⁸⁷ of the existing legal framework governing this area. In two reports produced for 2010 i 2014⁸⁸ Universal Periodic Review, Association for Democratic Initiatives placed the strongest emphasis on the adoption of the Law on FLA as a prerequisite for equal access to justice for all BiH citizens. In the period 2013–2015, in addition to two above organisations, Centre for Information and Legal Assistance Zvornik, Foundation of Local Democracy and Association of Judges of BiH, together with other members of the Joint Policy Forum,⁸⁹ launched a series of advocacy campaigns to promote adoption of the mentioned law. Within Triple A project, Foundation of Local Democracy from Sarajevo launched an initiative to create sustainable model of free legal aid in Sarajevo Canton.⁹⁰ UNDP BiH initiated

⁸⁵ Vaša prava BiH (2014). *Policy brief: Jačanje i unaprijeđenje pristupa pravdi u BiH – Besplatna pravna pomoć*. [Policy Brief: Strengthening and improving access to justice in BiH – Free Legal Aid]; Magazin Vaša prava BiH no. 29: *Neujednačenost i neefikasnost sistema besplatne pravne pomoći: Potreba donošenja zakona o besplatnoj pravnoj pomoći u Bosni i Hercegovini*. [The inconsistency and inefficiency of the legal aid system: The need of passing the law on free legal aid in Bosnia and Herzegovina].

⁸⁶ Justice Network in BiH was initiated by the Association for Democratic Initiatives in 2010, which brought together 64 members, out of which one third are professional associations, and the rest of the NGOs active in the justice sector in BiH.

⁸⁷ Human Rights and Justice in Bosnia and Herzegovina, Report on the implementation of recommendations in the justice sector in Bosnia and Herzegovina from the Universal Periodic Review of the UN Human Rights 2010-2011, Association for Democratic Initiatives (ADI) / Centre for Human Rights on behalf of the Justice Network, 2011, Human rights and Justice in Bosnia and Herzegovina, Report on the implementation of recommendations in the justice sector in Bosnia and Herzegovina from the Universal periodic review of the UN Human rights 2011-2012, 2012-2013, 2013 and 2014, the Association for democratic initiatives (ADI) / Centre for Human rights on behalf of the Justice Network

⁸⁸ The report on the implementation of recommendations in the justice sector in Bosnia and Herzegovina from the Universal Periodic Review of the UN Human Rights 2013-2014, Association for Democratic Initiatives (ADI) / University of Sarajevo Centre for Human Rights on behalf of the Justice Network in BiH, 2014, Sarajevo.

⁸⁹ Forum for joint policy initiatives set up in February 2013 between the five NGOs in BiH and the BiH MoJ and HJPC that have committed themselves to work on defining and addressing the need for free legal aid in BiH with a view to adopting and implementing the Law on Free Legal Aid.

⁹⁰ <http://www.fld.ba/stranica/kreiranje-odrivog-modela-besplatne-pravne-pomoi-u-kantonu-sarajevo>

establishment of the Network of the Free Legal Aid Providers⁹¹ which was also actively involved in the development of the last draft of the Law on FLA, as well as the organisations which have, so far, been the carriers of advocacy activities, such as the members of Network of the Free Legal Aid Providers, Justice Network and member organisations of coalition the Initiative for the monitoring of European Union Integration.

Conclusions and recommendations

The survey revealed that BiH continues to lack “consistent system for provision of free legal aid which fulfils the standards accepted in European Union, aiming to ensure access, through free legal aid, to the courts and other institutions which decide on the rights and obligations of the citizens, and access to fair trial i.e. fair management of other procedures.”⁹²

The existing system for provision of information, consultations and free legal aid services is not efficient and fails to meet the needs of the citizens. Notwithstanding the current efforts of international community and non-government organisations, it is necessary to continue the activities to establish the system which will provide equal access to justice for all BiH citizens, and as such, be compliant with European and international standards.

Recommendations for the governments at BiH and entity level:

- Adoption of the Law on Free Legal Aid at the level of Bosnia and Herzegovina, in order to establish a harmonised free legal aid system which will fully reflect international and European standards and practice at all levels of government.
- Adoption of the Law on Free Legal Aid at the level of the Federation of BiH and in the cantons which have not yet enacted this law.
- Harmonisation of the existing free legal aid regulations at all levels, aiming to ensure the minimum standards for delivery of free legal aid throughout Bosnia and Herzegovina, with a particular focus on:
 - I. Type of services and areas where free legal aid is provided,
 - II. Criteria and procedures to assign the status “free legal aid beneficiary”,
 - III. Quality of work and the level of independence in the work of free legal aid providers, in particular in cases of legal representation before the court,
 - IV. Role of bar associations and lawyers in the system of providing *pro bono* aid,
 - V. Role and position of CSOs in free legal aid system,
 - VI. Monitoring and reporting on the existing FLA system.

⁹¹ Network with the support of UNDP BiH Access to Justice Project, is continuously working on the implementation of strategic objectives related to the development of quality and transparent system of free legal aid at all levels in Bosnia and Herzegovina, which among others, includes the development of mechanisms to increase the awareness of citizens about their rights in the area of free legal aid.

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- Amendments to the existing criminal procedure acts (and current free legal aid regulations) to include the right to free legal aid for victims or injured parties in criminal proceedings, vulnerable witnesses and witnesses under threat, as well as the victims of hate crimes, domestic and sexual violence, and to determine the methodology of providing and financing free legal aid intended for above beneficiaries.
- Harmonisation of existing legal framework which governs the freedom of access to information with the Law on Personal Data Protection, in a way which does not jeopardize the purpose of the law which governs the free access to information.
- Ensure the funds and establish the continuous education programmes, consultations and trainings on free legal aid intended for police officers, prosecutors, and other justice sector employees, which will be implemented by entity centres for training of judges and prosecutors, and other agencies for the provision of trainings.
- Strengthening the public awareness on the rights of citizens in the area of free legal aid and strengthening the cooperation with civil society organisations which provide free legal aid, and cooperation with bar associations.
- Strengthening the awareness of citizens of the role and obligation of municipalities as free legal aid providers.

Recommendations for civil society in BiH:

- Design and implement campaigns on free legal aid, as well as role and capacities of NGOs in the existing system.
- Activities to establish efficient free legal aid system for specific social groups, including disabled persons and victims of hate crime, domestic violence and sexual abuse, in cooperation with existing organisations which provide legal aid for already mentioned groups.
- Introducing functional referral system, by establishing a single data base of all CSOs in BiH which provide free legal aid.
- Activities to establish and implement uniform standards for measurement and control of the quality of provided services.
- Activities to establish field offices to enable access to information, consultations and free legal aid to citizens in rural areas.
- Continuation of efforts in the advocacy area regarding the adoption of the Law on Free Legal Aid in BiH, the law at the level of FBiH and cantons, and harmonisation of existing regulations at all levels in BiH.

Recommendations for the donors:

- To continue to finance projects which pertain to free legal aid providers and organisations which conduct monitoring and advocacy activities to establish more functional free legal aid system.
- Synchronisation of activities to establish functional free legal aid system in BiH.

Recommendations for state and local bar associations in BiH:

- To encourage bar associations to develop and implement free legal aid services, which will be provided by their members.

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Association for Democratic Initiatives (ADI) is a non-governmental organization working on political and economic development, the rule of law, protection of human rights, and EU integrations in Bosnia and Herzegovina by fostering participatory and direct democracy practices and instigating partnerships between the civil society, governmental institutions and the private sector. ADI realizes its objectives through proposing policy solutions, implementing projects and advocacy campaigns, and organizing educational trainings. Particularly, ADI's efforts are directed towards building institutional capacities of civil society organizations and promotion of their role in the society.

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